

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>ROSELENE SANON and NEMI SANON (DOB: 01-01-69), Individually and as Administrator of the ESTATE OF NEHMSON D. SANON (DOB: 05-26-95); and PAULETTE CEZIL POGUE (DOB: 06-03-63), Individually and as Administrator of the ESTATE OF GAEL CEZIL CHRISPIN (DOB: 05-04-96);</p> <p>Plaintiffs,</p> <p>v.</p> <p>CITY OF PELLA and FELLOWSHIP OF CHRISTIAN ATHLETES,</p> <p>Defendants.</p>	<p>CASE NO.</p> <p>PETITION AND JURY DEMAND</p> <p>CLERK DISTRICT COURT JAN 21 PM 5:11 2019</p>
---	--

COMES NOW the Plaintiffs Roselene Sanon and Nemi Sanon, Individually and as Administrator of the Estate of Nehmson D. Sanon and Paulette Cezil Pogue, Individually and as Administrator of the Estate of Gael Cezil Chrispin and for their causes of action against Defendants City of Pella and Fellowship of Christian Athletes:

PARTIES

1. At all times material hereto, Plaintiffs Nemi Sanon and Roselene Sanon were citizens and residents of Jackson County, Missouri and the natural parents of decedent Nehmson D. Sanon. Plaintiff Nemi Sanon is the duly appointed and qualified Administrator of the Estate of Nehmson D. Sanon.

2. At all times material hereto, decedent Nehmson D. Sanon was a citizen and resident of Jackson County, Missouri.

3. At all times material hereto, Plaintiff Paulette Cezil Pogue was a citizen of Haiti lawfully residing in Jackson County, Missouri and the natural parent of decedent Gael Cezil

Chrispin. Plaintiff Paulette Cezil Pogue is the duly appointed and qualified Administrator of the Estate of Gael Cezil Chrispin.

4. At all times material hereto, decedent Gael Cezil Chrispin was a citizen of Haiti lawfully residing in Jackson County, Missouri.

5. At all times material hereto, Defendant City of Pella was a municipal corporation organized under the laws of the state of Iowa.

6. At all times material hereto, Defendant Fellowship of Christian Athletes ("FCA") was an Oklahoma corporation registered as a revised foreign non-profit corporation in Iowa with its principal place of business in Kansas City, Missouri and with its Central/Western Iowa office at 2600 Grand Ave., Ste. 114 Des Moines, Iowa 50312.

FACTUAL BACKGROUND

7. At all times material Defendant City of Pella owned and operated the Pella Aquatic Center located in Pella, Marion County, Iowa.

8. Construction work at the Pella Aquatic Center began in 2003 and was completed and opened to the public on July 3, 2004.

9. At all times material, Defendant FCA, through their Central/Western Iowa office, organized and was operating a youth sports camp at Central College in Pella, Iowa.

10. Plaintiffs' decedents Nehmson Sanon and Gael Cezil Chrispin were registered campers and attended the FCA camp in Pella, Iowa beginning July 12, 2010.

11. Prior to the start of FCA camp, Plaintiffs Roselene Sanon and Paulette Cezil Pogue completed and signed a "Student Participant Permission/Waiver Form." Both parents indicated on the forms that their sons could not swim.

12. On July 14, 2010, Defendant FCA rented the Pella Aquatic Center from the City of Pella for a pool party for the participants attending the athletic camp. Defendant FCA had exclusive use of the pool from 8:30 p.m. until 9:30 p.m.

13. On July 14, 2010, the City of Pella provided lifeguards for the FCA pool party; which was attended by approximately 175 children and 21 FCA counselors.

14. Defendant FCA allowed Plaintiffs' decedents Nehmson Sanon and Gael Cezil Chrispin to enter the Pella Aquatic Center.

15. Defendant FCA did not take any action to prevent Plaintiffs' decedents Nehmson Sanon and Gael Cezil Chrispin from entering the water, nor did they take any other precautions for the safety of the children in their care.

16. At the start of the FCA pool party on July 14, 2010 the water clarity in the main pool at the Pella Aquatic Center was such that the main drain of the pool was not visible.

17. On July 14, 2010, the underwater pool lights installed in the main pool were functioning, but were not turned on.

18. On July 14, 2010, Plaintiffs' decedents Nehmson Sanon and Gael Cezil Chrispin were in the main pool at or near the drop slide located in the thirteen foot deep end.

19. The lifeguards on duty failed to ensure that Plaintiffs' decedents Nehmson Sanon and Gael Cezil Chrispin came up after going down the drop slide and/or safely reached the side of the pool.

20. On July 14, 2010, Plaintiffs' decedents Nehmson Sanon and Gael Cezil Chrispin drowned. Their bodies were eventually found in the thirteen foot deep end of the main pool near the main drain.

COUNT I

NEGLIGENCE – FELLOWSHIP OF CHRISTIAN ATHLETES

21. Defendant FCA was negligent in one or more of the following particulars:
- a. By allowing Plaintiffs' decedents Nehmson Sanon and Gael Cezil Chrispin to enter the Pella Aquatic Center after their parents each signed a "Student Participant Permission/Waiver Form" indicating that both could not swim;
 - b. By allowing Plaintiffs' decedents Nehmson Sanon and Gael Cezil Chrispin to enter the Pella Aquatic Center unsupervised knowing that both boys were unable to swim;
 - c. By failing to properly train and supervise its camp counselors;
 - d. By taking the boys from the camp to the pool when they were unable to swim; and
 - e. By failing to exercise reasonable care under the circumstances.
22. The negligence of the FCA was the proximate cause of the tragic and untimely deaths of decedents Nehmson Sanon and Gael Cezil Chrispin.
23. Plaintiffs Roselene Sanon, Nemi Sanon, Individually and as Administrator of the Estate of Nehmson D. Sanon and Paulette Cezil Pogue, Individually and as Administrator of the Estate of Gael Cezil Chrispin have been damaged and are entitled to full and complete compensation for all damages allowed by law.
24. Plaintiffs' decedents Nehmson D. Sanon and Gael Cezil Chrispin suffered physical and mental pain, anguish, loss of enjoyment of life and premature death.

25. The Estate of Nehmson D. Sanon and the Estate of Gael Cezil Chrispin have sustained damage for the loss of accumulations to their Estates and funeral and burial expenses as a result of their premature deaths.

WHEREFORE, Plaintiffs Roselene Sanon, Nemi Sanon Individually and Administrator of the Estate of Nehmson D. Sanon and Paulette Cezil Pogue, Individually and as Administrator of the Estate of Gael Cezil Chrispin pray for judgment against Defendant Fellowship of Christian Athletes in such an amount as will fully and fairly compensate them for the damages alleged herein, together with the costs of this action, for interest as allowed by law and for such other relief as may be just in the premises.

COUNT II

NEGLIGENCE – CITY OF PELLA

26. Defendant City of Pella was negligent in one or more of the following particulars:
- a. Failing to properly and adequately train lifeguards and personnel;
 - b. Failing to utilize the underwater lights;
 - c. Failing to have adequate overhead and underwater lighting;
 - d. Allowing children to enter the main pool at night when the underwater pool lights were not on;
 - e. Allowing children to enter the deep end of the pool without assuring that they had adequate swimming skills;
 - f. Failing to adequately supervise children in the pool;
 - g. Failing to properly observe the pool and the children using the deep end of the pool;
 - h. Failing to maintain water clarity in the main pool at the Pella Aquatic Center;

- i. Allowing the pool to remain open when the main drain was not visible due to poor water clarity;
- j. Failing to know, understand and act on the most basic safety requirements applicable to swimming pools; and
- k. Failing to exercise reasonable care under all the circumstances.

27. The negligence of the Defendant City of Pella was the proximate cause of the tragic and untimely deaths of decedents Nehmson Sanon and Gael Cezil Chrispin.

28. Plaintiffs Nemi Sanon, Individually and as Administrator of the Estate of Nehmson D. Sanon and Paulette Cezil Pogue, Individually and as Administrator of the Estate of Gael Cezil Chrispin have been damaged and are entitled to full and complete compensation for all damages allowed by law.

29. Plaintiffs' decedents Nehmson D. Sanon and Gael Cezil Chrispin suffered physical and mental pain, anguish, loss of enjoyment of life and premature death.

30. The Estate of Nehmson D. Sanon and the Estate of Gael Cezil Chrispin have sustained damage for the loss of accumulations to their Estates and funeral and burial expenses as a result of their premature deaths.

WHEREFORE, Plaintiffs Roselene Sanon, Nemi Sanon Individually and Administrator of the Estate of Nehmson D. Sanon and Paulette Cezil Pogue, Individually and as Administrator of the Estate of Gael Cezil Chrispin pray for judgment against Defendant City of Pella in such an amount as will fully and fairly compensate them for the damages alleged herein, together with the costs of this action, for interest as allowed by law, and for such other relief as may be just in the premises.

COUNT III

CONDUCT CONSTITUTING CRIMINAL OFFENSE – CITY OF PELLA

31. The acts or omissions of the officers, agents, servants or employees of the Defendant City of Pella constituted a criminal offense in one or more of the following particulars:

- a. Failing to properly and adequately train lifeguards and personnel;
- b. Failing to utilize the underwater lights;
- c. Failing to have adequate overhead and underwater lighting;
- d. Allowing children to enter the main pool at night when the underwater pool lights were not on;
- e. Allowing children to enter the deep end of the pool without assuring that they had adequate swimming skills;
- f. Failing to adequately supervise children in the pool;
- g. Failing to properly observe the pool and the children using the deep end of the pool;
- h. Failing to maintain water clarity in the main pool at the Pella Aquatic Center;
- i. Allowing the pool to remain open when the main drain was not visible due to poor water quality;
- j. Failing to know, understand and act on the most basic safety requirements applicable to swimming pools; and
- k. Failing to exercise reasonable care under all the circumstances.

32. The negligence of the Defendant City of Pella was the proximate cause of the tragic and untimely deaths of decedents Nehmson Sanon and Gael Cezil Chrispin.

33. Plaintiffs Roselene Sanon, Nemi Sanon, Individually and as Administrator of the Estate of Nehmson D. Sanon and Paulette Cezil Pogue, Individually and as Administrator of the Estate of Gael Cezil Chrispin have been damaged and are entitled to full and complete compensation for all damages allowed by law.

34. Plaintiffs' decedents Nehmson D. Sanon and Gael Cezil Chrispin suffered physical and mental pain, anguish, loss of enjoyment of life and premature death.

35. The Estate of Nehmson D. Sanon and the Estate of Gael Cezil Chrispin have sustained damage for the loss of accumulations to their Estates and funeral and burial expenses as a result of their premature deaths.

WHEREFORE, Plaintiffs Roselene Sanon, Nemi Sanon Individually and Administrator of the Estate of Nehmson D. Sanon and Paulette Cezil Pogue, Individually and as Administrator of the Estate of Gael Cezil Chrispin pray for judgment against Defendant City of Pella in such an amount as will fully and fairly compensate them for the damages alleged herein, together with the costs of this action, for interest as allowed by law, and for such other relief as may be just in the premises.

COUNT IV

PREMISES LIABILITY – CITY OF PELLA

36. At all times material hereto, Defendant City of Pella was in control of the premises where Plaintiffs' decedents Nehmson Sanon and Gael Cezil Chrispin were invited to enter.

37. Defendant City of Pella knew, or in the exercise of reasonable care, should have known of unsafe condition on its premises that involved an unreasonable risk of injury or death and that Plaintiffs' decedents would not have realized the same.

38. Defendant City of Pella was negligent in one or more of the following particulars:

- a. Failing to properly and adequately train lifeguards and personnel;
- b. Failing to utilize the underwater lights;
- c. Failing to have adequate overhead and under water lighting;
- d. Allowing children to enter the main pool at night when the underwater pool lights were not on;
- e. Allowing children to enter the deep end of the pool without assuring that they had adequate swimming skills;
- f. Failing to adequately supervise children in the pool;
- g. Failing to properly observe the pool and the children using the deep end of the pool;
- h. Failing to maintain water clarity in the main pool at the Pella Aquatic Center;
- i. Allowing the pool to remain open when the main drain was not visible due to poor water quality;
- j. Failing to know, understand and act on the most basic safety requirements applicable to swimming pools; and
- k. Failing to exercise reasonable care under all the circumstances.

39. The negligence of the Defendant City of Pella was the proximate cause of the tragic and untimely deaths of decedents Nehmson Sanon and Gael Cezil Chrispin.

40. Plaintiffs Roselene Sanon, Nemi Sanon, Individually and as Administrator of the Estate of Nehmson D. Sanon and Paulette Cezil Pogue, Individually and as Administrator of the Estate of Gael Cezil Chrispin have been damaged and are entitled to full and complete compensation for all damages allowed by law.

41. Plaintiffs' decedents Nehmson D. Sanon and Gael Cezil Chrispin suffered physical and mental pain, anguish, loss of enjoyment of life and premature death.

42. The Estate of Nehmson D. Sanon and the Estate of Gael Cezil Chrispin have sustained damage for the loss of accumulations to their Estates and funeral and burial expenses as a result of their premature deaths.

WHEREFORE, Plaintiffs Roselene Sanon, Nemi Sanon Individually and Administrator of the Estate of Nehmson D. Sanon and Paulette Cezil Pogue Individually and as Administrator of the Estate of Gael Cezil Chrispin pray for judgment against Defendant City of Pella in such an amount as will fully and fairly compensate them for the damages alleged herein, together with the costs of this action, for interest as allowed by law and for such other relief as may be just in the premises.

COUNT V

CITY OF PELLA – DUE PROCESS VIOLATION

43. Article I, Sections 1, 9 and 25 of the Iowa Constitution guarantee that no person shall be deprived of life, liberty, or property without due process of law.

44. Defendant City of Pella violated Plaintiffs' due process rights by engaging in the following conduct:

- a. Failing to turn on the underwater pool lights despite direct knowledge that they were functioning;
- b. Failing to have adequate overhead and underwater lighting;
- c. Failing to maintain water clarity in the pool such that the main drain of the pool was not visible;

- d. Allowing children, including Plaintiff's decedents, to enter the deep end of the pool at night when the underwater lights were not turned on;
- e. Allowing the pool to remain open and permitting children, including Plaintiff's decedents, to enter the pool when the main drain was not visible due to poor water clarity.

45. The City of Pella's conduct put the Plaintiffs' decedents at a significant risk of serious and immediate injury or death.

46. The risks and dangers of the aforementioned conduct were obvious and known to the City of Pella.

47. The conduct of the City of Pella was grossly negligent or deliberate and consciously indifferent to Plaintiffs' decedents' safety and wellbeing and violated their right to life, safety, and happiness under the Iowa Constitution.

48. The unconstitutional conduct of the City of Pella was the proximate cause of the tragic and untimely deaths of decedents Nehmson D. Sanon and Gael Cezil Chrispin.

49. Plaintiffs Roselene Sanon, Nemi Sanon, Individually and as Administrator of the Estate of Nehmson D. Sanon and Paulette Cezil Pogue, Individually and as Administrator of the Estate of Gael Cezil Chrispin have been damaged and are entitled to full and complete compensation for all damages allowed by law.

50. Plaintiffs' decedents Nehmson D. Sanon and Gael Cezil Chrispin suffered physical and mental pain, anguish, loss of enjoyment of life and premature death.

51. The Estate of Nehmson D. Sanon and the Estate of Gael Cezil Chrispin have sustained damage for the loss of accumulations to their Estates and funeral and burial expenses as a result of their premature deaths.

WHEREFORE, Plaintiffs Roselene Sanon, Nemi Sanon Individually and Administrator of the Estate of Nehmson D. Sanonn and Paulette Cezil Pogue Individually and as Administrator of the Estate of Gael Cezil Chrispin pray for judgment against Defendant City of Pella in such an amount as will fully and fairly compensate them for the damages alleged herein, together with attorneys' fees and the costs of this action, for interest as allowed by law and for such other relief as may be just in the premises.

COUNT VI

LOSS OF CONSORTIUM – NEMI AND ROSELENE SANON

52. At all times material hereto, Plaintiffs Nemi Sanon and Roselene Sanon were the natural parents of decedent Nehmson Sanon.

53. As a direct and proximate result of the aforementioned conduct of Defendants, and each of them, Plaintiffs' decedent suffered injuries which caused his premature death on July 14, 2010.

54. As a direct and proximate result of the conduct of Defendants aforesaid, and each of them, Plaintiffs Nemi Sanon and Roselene Sanon have been deprived of the love, affection, comfort, services, society, companionship, and consortium of Nehmson Sanon.

WHEREFORE, Plaintiffs Nemi Sanon and Roselene Sanon pray for judgment against Defendants, and each of them, in such an amount as will fully and fairly compensate them for damages alleged herein, together with the costs of this action, for interest as allowed by law and for such other relief as may be just in the premises.

COUNT VII

LOSS OF CONSORTIUM – PAULETTE CEZIL POGUE

55. At all times material hereto, Plaintiff Paulette Cezil Pogue was the natural parent of decedent Gael Cezil Chrispin.

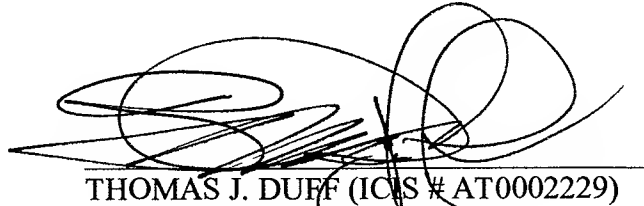
56. As a direct and proximate result of the aforementioned conduct of Defendants, and each of them, Plaintiff's decedent suffered injuries which caused his premature death on July 14, 2010.

57. As a direct and proximate result of the conduct of Defendants aforesaid, and each of them, Plaintiff Paulette Cezil Pogue has been deprived of the love, affection, comfort, services, society, companionship, and consortium of Gael Cezil Chrispin.

WHEREFORE, Plaintiff Paulette Cezil Pogue prays for judgment against Defendants, and each of them, in such an amount as will fully and fairly compensate them for the damages alleged herein, together with the costs of this action, for interest as allowed by law and for such other relief as may be just in the premises.

JURY DEMAND

COMES NOW the Plaintiffs and demand trial by jury as to all counts.



THOMAS J. DUFF (ICIS # AT0002229)
DUFF LAW FIRM, P.L.C.

The Griffin Building
319 Seventh Street, Suite 600
Des Moines, Iowa 50309-3826
Telephone: (515) 283-1111
Fax: (515) 282-0477
Email: tom@tdufflaw.com

ROXANNE BARTON CONLIN
ICIS Pin AT0001642
ROXANNE CONLIN & ASSOCIATES, P.C.
The Griffin Building
319 Seventh Street, Suite 600
Des Moines, IA 50309
Phone: (515) 283-1111
Fax: (515) 282-0477
Email: roxlaw@aol.com
cc: ldg@roxanneconlinlaw.com

WILLIAM JACOB
JACOB & ASSOCIATES LLC
324 E. 11th Street, Suite 101
Kansas City, MO 64106
Phone: 816-474-3620
Fax: 816-221-2575
Email: wjj@jacobllc.com

ATTORNEYS FOR PLAINTIFF

Original filed.

*